

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE
CITY OF EVERETT CONCERNING OVERLAY IMPROVEMENTS TO
AIRPORT ROAD**

This INTERLOCAL AGREEMENT (the "Agreement"), is made and entered into pursuant to Chapter 39.34 RCW by and between Snohomish County, a political subdivision of the State of Washington (the "County"), and the City of Everett, a Washington municipal corporation (the "City"), together the "Parties", concerning the City overlaying certain portions of Airport Road for the County.

RECITALS

- A. Airport Road is a major arterial that provides access within the County and City between Interstate 5 and SR 526, Paine Field and the Boeing plant.
- B. As part of the City's 2015 Overlay Program, the City will be overlaying portions of Airport Road and other roads that are in the City.
- C. As part of the County's 2015 Overlay Program, the County plans to overlay two sections of Airport Road and a portion of 100th St SW, located within unincorporated Snohomish County, that extends eastward from Airport Road to the City limits (the "County's Airport Road Area Project") and more fully described in Exhibits A & B to this Agreement.
- D. The County Airport Road Area Project area is shown in red cross-hatch in Exhibit C to this Agreement.
- E. The Parties anticipate the City's 2015 Overlay Program and County Airport Road Area Project will be completed by the fall of 2015.
- F. The Parties agree it will be more efficient and mutually beneficial for the County and the City to work together cooperatively and for the City to function as the lead agency in coordinating, designing and constructing the County Airport Road Area Project in conjunction with the City's 2015 Overlay Program. Accordingly, as used hereafter in this Agreement, the term "Combination 2015 Overlay Program" refers to the combination of the City's 2015 Overlay Program and the County Airport Road Area Project.
- G. For purposes of this Agreement, Preliminary Engineering & Design (PE) activities performed by City Staff shall be referred to as the "Design Services", Project Construction (CN) by City contractors or subcontractors shall be referred to as the "Construction Services" and, Inspection and other Administrative activities by City Staff (CE) shall be referred to as the "Other Services". Design Services, Construction Services and Other Services are collectively referred to as the "Services" in this Agreement.
- H. While the City intends to design, construct, and coordinate the Combination 2015 Overlay Program, the Parties agree and acknowledge that all promises made under this Agreement by the County to the City are limited to those Services involving the County Airport Road Area Project and the County expressly makes no promises of any kind or nature to the City regarding work inside the City, nor

shall the City have any rights under this Agreement to demand performance of any kind from the County relating to work inside the City.

- I. In exchange for the Services provided by the City, the County shall reimburse the City its costs incurred in performing same. Estimated costs and percentage breakdown are shown in Exhibit B to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Requirements of Interlocal Cooperation Act

1.1 Authority for Agreement. This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

1.2 Purpose of Agreement. The purpose and intent of this Agreement is to facilitate the City planning, designing, constructing, and coordinating the County Airport Road Area Project. This Agreement establishes the City as the entity responsible for all aspects of County Airport Road Area Project planning, design and construction. The County shall cooperate with the City to the extent reasonably necessary for accomplishing the County Airport Road Area Project, and shall reimburse the City for the City's actual costs incurred in performing the Services.

1.3 No Separate Entity Necessary. The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

1.4 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with the performance of this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

1.5 Administrators. Each party to this Agreement shall designate an individual (an "Administrator"), which may be designated by title or position, to oversee and administer such party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

County's Initial Administrator:

Joyce Barnes
Snohomish County DPW
3000 Rockefeller Avenue M/S 607
Everett, Washington 98201
425-388-3488 ext. 4530
joyce.barnes@snoco.org

City's Initial Administrator:

Tom Hood
City of Everett DPW
3200 Cedar Street
Everett WA 98011
425-857-8809
Thood@everettwa.gov

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

2. Effective Date and Duration

This Agreement shall take effect when it has (i) been duly executed by both Parties, and (ii) as provided by RCW 39.34.040, either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect until all obligations of the Parties are discharged, unless earlier terminated pursuant to the provisions of Sections 10 or 11 of this Agreement.

3. General Provisions

The Parties agree to the following general provisions:

3.1 Record Retention. Each party following completion of the County Airport Road Area Project shall maintain accurate records related to the County Airport Road Area Project for a period equal to the minimum required pursuant to either state or federal requirements, whichever is applicable.

3.2 Independent Contractor. The City will perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The City has the express right to direct and control the City's activities in providing the agreed Services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance.

3.3 Sub-Contracting. The City may, in its sole discretion, hire one or more contractors and/or sub-contractors to perform some or all of the Services.

3.4 Calculation of Cost of Design Services and Other Services. The cost of Design Services and Other Services for the County Airport Road Area Project shall be calculated on a percentage basis of the County Airport Road Area Project square footage to the total square footage of the Combination 2015 Overlay Program. Accordingly, as identified in Exhibit B of this Agreement, the costs of Design Services and Other Services for the County Airport Road Area Project are deemed to be equal to 11.3% of the costs of Design Services and Other Services for the Combination 2015 Overlay Program.

3.5 Calculation of Cost of Construction Services. The cost of Construction Services for the County Airport Road Area Project shall be based on the actual cost to the City for the work performed by City contractors or subcontractors. The Parties agree that Construction Services for the Project includes costs of change orders and contractor claims related to the County Airport Road Area Project.

3.6 Control of Signalized Intersections During Construction. The Parties agree to work together to control the timing of all traffic signals located in either Parties jurisdiction that may be impacted by the construction of the Project.

3.7 Evening/Weekend Work. In the event that it is necessary, in the reasonable judgment of the City engineer, to perform Construction Services at night and/or on the weekends, the Parties agree they will cooperate to obtain any required regulatory or administrative approvals.

4. City Responsibilities

4.1 Lead Agency. The City shall serve as the lead agency for the Project.

4.2 Performance of Services. The City shall perform all Services necessary to complete the Project. If the City determines that a change order is required on the County Airport Road Area Project, the City will not issue the change order unless pre-approved by the County, which approval will not be unreasonably withheld or delayed.

4.3 Invoicing. The City shall invoice the County for all Services performed by the City related to the County Airport Road Area Project. Invoices may be sent monthly, quarterly or on any other schedule that is mutually convenient to the Parties. The City shall include documentation of all costs for labor, materials and equipment included in the invoice.

5. County Responsibilities

5.1 Preparatory Work. The County, prior to the City starting construction of the County Airport Road Area Project, shall be responsible for completing all necessary pavement repairs.

5.2 Payment of Invoice. The County shall pay the City for Services relating to the County Airport Road Area Project. Unless the County delivers written notice to the City disputing the amount of a particular invoice, the County shall make payment on all invoices submitted by the City within thirty (30) days following receipt by the County of said invoices. Timely payment of an invoice shall not constitute acceptance by the County of the Services at issue. Instead, the County's acceptance of Services shall be governed by Section 6 of this Agreement.

6. Review, Inspection and Acceptance of Services

6.1 Review and Acceptance of Design Services. The County shall have the right to review and approve the Design Services. Such review and approval shall occur as described as follows:

a) Design Review Notice. The City shall provide the County with written notice (each such notice, a "Design Review Notice") when the Design Services for the County Airport Road Area Project are at ninety percent (90%) design. The County shall have ten (10) business days after receiving a Design Review Notice in which to review the construction design plans at issue and either accept or reject same by delivering written notice to the County (each such notice a "Design Acceptance Notice" or a "Design Rejection Notice," as appropriate).

b) Description of Defects. Should the County reject all or any portion of the Design Services at issue, the County's Design Rejection Notice shall state the particular portions of the Design Services being rejected and explain with reasonable particularity the reasons for such rejection.

c) Response to Rejection Notice. Within three (3) business days of receiving a Design Rejection Notice, the City shall contact the County to discuss the

defects described in the County's Design Rejection Notice. If it is determined and agreed that corrective measures are needed, the City shall promptly perform the necessary corrective measures. The Parties shall then repeat the notice and review process with respect to that portion of the Design Services that have been corrected.

d) Deemed Acceptance. Should the County fail to respond to a Design Review Notice within the ten (10) business day period set forth above, the County shall be deemed to have accepted and approved the portion of the Design Services at issue.

6.2 Inspection and Acceptance of Construction Services. The County shall have the right to inspect and approve the Construction Services. Such inspection and approval shall occur as described as follows:

a) Right to Inspect During Construction. The County shall have the ongoing right to inspect the Construction Services any time during construction. The County shall immediately notify the City of any concerns encountered during such an inspection. The Parties shall cooperate to resolve any such concerns in a mutually satisfactory manner.

b) Final Construction Inspection Notice. The City shall provide the County with written notice (the "Final Construction Inspection Notice") when the Construction Services for the County Airport Road Area Project have been completed. The Final Construction Inspection Notice shall indicate the date on which the County Airport Road Area Project will be ready for final inspection by the County. The County shall perform a final inspection of the Project on the day specified in the Final Construction Inspection Notice, or on such other day as the Parties may agree upon. The City shall have the right to have appropriate City personnel present during the County's final inspection of the Construction Services.

c) Acceptance or Rejection. Within seven (7) calendar days after the date of final inspection, the County shall provide written notice to the City indicating whether the County accepts ("Construction Acceptance Notice") or rejects ("Construction Rejection Notice") the Construction Services performed by the City.

d) Description of Defects. Should the County reject all or any portion of the Construction Services, the County's Construction Rejection Notice shall state the particular portions of the Construction Services being rejected and explain with reasonable particularity the reasons for such rejection.

e) Response to Rejection Notice. Within three (3) business days of receiving a Construction Rejection Notice, the City shall contact the County to discuss the defects described in the County's Construction Rejection Notice. If it is determined and agreed that corrective measures are needed, the City shall promptly perform the necessary corrective measures. The Parties shall then repeat the notice and inspection process with respect to the portion of the Construction Services at issue.

f) Deemed Acceptance. Should the County fail to deliver a Construction Rejection Notice to the City within seven (7) calendar days after performing the final inspection, as specified in Section 6.2(c) above, the County shall be deemed to have accepted and approved the Construction Services.

7. Indemnification/Hold Harmless

7.1 County's Indemnification of City. The County shall indemnify, defend and hold the City harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the City may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on, about or around the County Airport Road Area Project due to or arising out of the City's performance of Services pursuant to this Agreement, but only to the extent such accidents, damages or injuries are due to any negligent or wrongful act or omission of the County; or (ii) any breach or Default (as such term is defined in Section 10.1 below) by the County under this Agreement.

7.2 City's Indemnification of County. The City shall indemnify, defend and hold the County harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on or around the County Airport Road Area Project during the term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the City; or (ii) any breach or Default (as such term is defined in Section 10.1 below) of the City under this Agreement.

7.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Section 7.1 and Section 7.2 above are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

7.4 Survival. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

9. Compliance with Laws

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

10. Default and Remedies

10.1 Default. If either the County or City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

10.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 10.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

11. Early Termination

11.1 30 Days' Notice. Except as provided in Section 11.2 of this Agreement, either party may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days' advance written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

11.2 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by either party immediately by delivering written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

11.3 Calculation of Costs Due Upon Early Termination. Upon early termination of this Agreement as provided in this Section 11, the County shall pay the City for all Services performed up to the date of termination, as well as the costs of any and all non-cancelable obligations. The City shall notify the County within thirty (30) days of the date of termination of all remaining costs including non-cancelable costs. No payment shall be made by the County for any expense incurred or Services performed following the effective date of termination unless authorized in writing by the County, which authorization will not be unreasonably withheld in the situation where termination is effective immediately under Section 11.2 above. The County acknowledges that, after the execution of a construction contract between the City and its general contractor, early termination of the County Airport Road Area Project may be deemed a termination for convenience or similar termination, which may require the City to compensate the contractor for such termination, in accordance with the construction contract documents. The County will reimburse the City for any such compensation paid by the City.

12. Notices

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

13. Miscellaneous

13.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein.

13.2 Amendment. Any amendment to this Agreement shall be specifically identified by separate written addendum agreed to by the Parties' Administrators identified in Section 1.4 of this Agreement.

13.3 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

13.4 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

13.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

13.6 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

13.7 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which

may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

13.8 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

13.9 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the Parties.

13.10 No Third Party Beneficiaries. This Agreement and each and every provision hereof are for the sole benefit of the City and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

13.11 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

SNOHOMISH COUNTY:

By: [Signature] 4/15/15
John Lovick Date
Snohomish County Executive
LEND A CRAWFORD
Executive Director

CITY OF EVERETT:

By: [Signature] 2/26/2015
Ray Stephenson Date
Mayor

Approved as to Form:

[Signature] 1/9/15
Deputy Prosecuting Attorney

Approved as to Form:

[Signature] for J.O. Iles
City Attorney

COUNCIL USE ONLY	
Approved:	<u>4-15-15</u>
Docfile:	<u>D-4</u>

ATTEST:
[Signature]
City Clerk

EXHIBIT A

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF EVERETT CONCERNING OVERLAY IMPROVEMENTS TO AIRPORT ROAD

SCOPE OF COUNTY AIRPORT ROAD AREA PROJECT

County Road Segments:

- (SC-1) Airport Road from City limits (1,900 feet south of W Casino Rd) south 3,090 feet to City limits (396' south of 100th ST SW) and comprising approximately 228,570 square feet.
- (SC-2) 100th St SW from Airport Road east 1,256 feet to City limits and comprising approximately 53,830 square feet.
- (SC-3) Airport Road from City limits at east leg of SR 99 intersection east for 450 feet and comprising approximately 32,400 square feet.

County Airport Road Area Project will consist of:

1. A two inch (2") grind of the existing asphalt from curb to curb across the full width of the roadway,
2. Airport Road Overlay. Two inches (2") of new HMA CI ½",
3. 100th St SW Overlay. Two inches (2") of new HMA CI ½"
4. Adjustment of all utility covers, catch basins, and survey monuments as needed,
5. Re-install channelization to the same configuration as it was before the Project,
6. Signal loop replacement as needed, and
7. All other miscellaneous work items typically related to this type of road construction.

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF EVERETT CONCERNING OVERLAY IMPROVEMENTS

TABLE 1

COUNTY & CITY OVERLAY SQUARE FOOTAGE AND PERCENTAGES

JURISDICTION	TOTAL SQUARE FEET	PERCENTAGE OF TOTAL SQ FT
County	314,800	11.30%
Everett	2,477,454	88.70%
Combination 2015 Overlay Project Total	2,792,254	100%

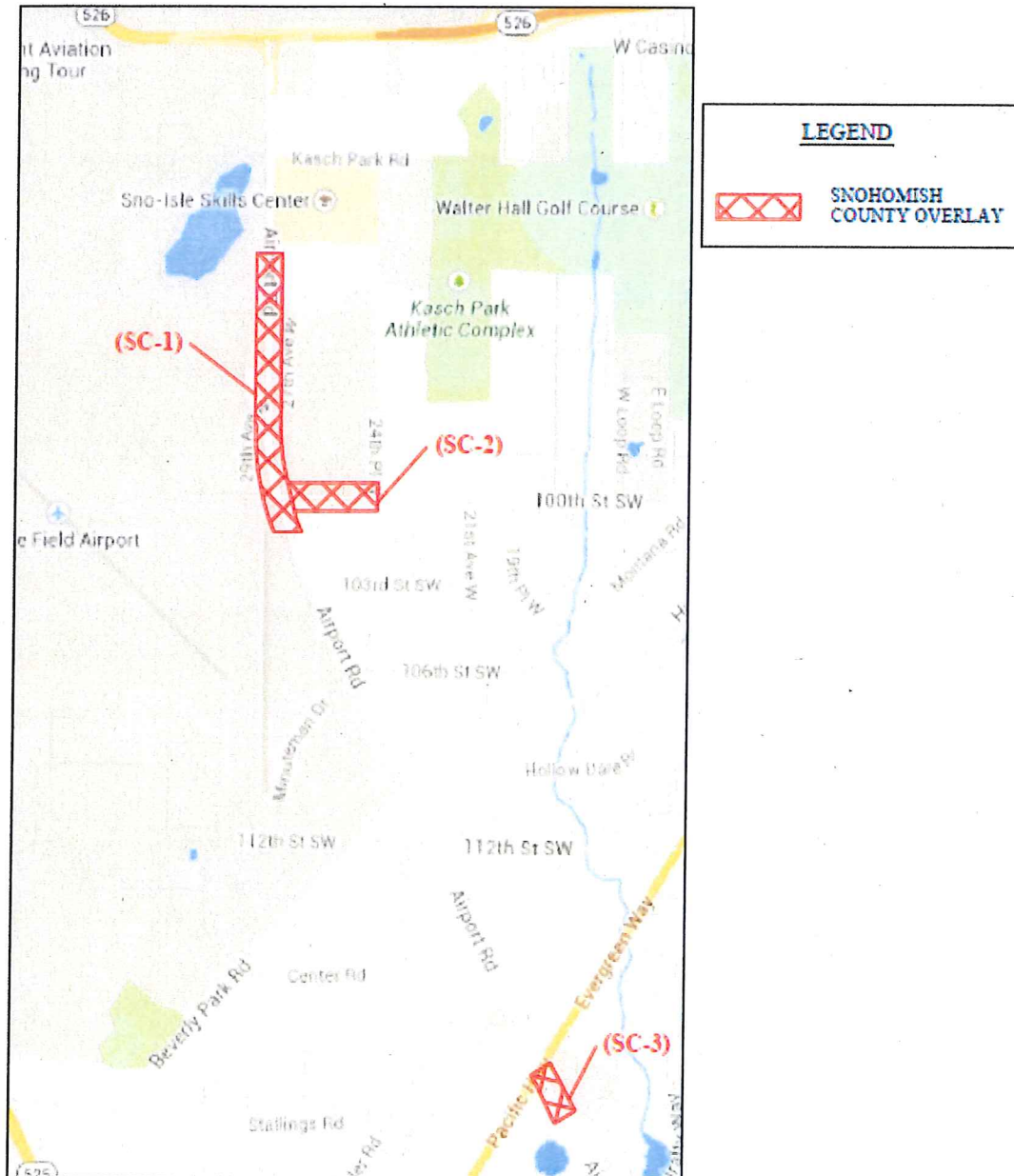
TABLE 2

ESTIMATED COSTS FOR COMBINATION 2015 OVERLAY PROJECT

ITEM	SNOHOMISH COUNTY	EVERETT	TOTAL
Construction by City Contractors or Subcontractors (CN)	\$432,269 ⁽⁴⁾	\$3,393,119 ⁽³⁾	\$3,825,388
Preliminary Engineering & Design by City Staff (PE)	\$43,227 ⁽⁶⁾	\$339,312 ⁽⁵⁾	\$382,539 ⁽¹⁾
Inspection and other Administrative Actions by City Staff (CE)	\$51,872 ⁽⁸⁾	\$407,175 ⁽⁷⁾	\$459,047 ⁽²⁾
TOTAL	\$527,368	\$4,139,606	\$4,208,386

- (1) Total PE is estimated at 10% of the Total CN amount
- (2) Total CE is estimated at 12% of the Total CN amount
- (3) Everett CN is estimated at 88.7 % of the Total CN amount
- (4) County CN is estimated at 11.3 % of the Total CN amount
- (5) Everett PE is estimated at 88.7 % of the Total PE amount
- (6) County PE is estimated at 11.3 % of the Total PE amount
- (7) Everett CE is estimated at 88.7 % of the Total CE amount
- (8) County CE is estimated at 11.3 % of the Total CE amount

EXHIBIT C
INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE
CITY OF EVERETT CONCERNING OVERLAY IMPROVEMENTS TO
AIRPORT ROAD
MAP OF PROJECT AREA



10

2015 HMA Overlay – Interlocal Agreement with Snohomish County

COUNCIL BILL #
Originating Department
Contact Person
Phone Number
FOR AGENDA OF

Public Works
Tom Hood
425-257-8809
Feb. 11, 2015

Initialed by:
Department Head
CAA
Council President

Department(s) Approval

Vicinity map

Legal, Public Works

Authorize the Mayor to sign the Interlocal Agreement with Snohomish County for the 2015 HMA Overlay project.

Council approved
2/18/15 Jm